

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 10-36

**Date Received:** 3/22/2010

**Title:** Change of Acquisition & Contracting Director's Title

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**Name:** Eugene Scott

**Phone:** 202-493-4639

**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** T3.1.4(A)(7); T3.2.5(A)(9); T3.2.6 Appendix 7; T3.6.3(A)(5)(f); T3.6.4(A)(3); T3.8.4 Appendix 2; T3.10.4(A)(2); T3.13.1(A)(12); T3.13.1 Appendix 9

**Summary of Change:** Various sections in AMS Procurement Guidance are revised to correct the title of the Director of Acquisition and Contracting.

**Reason for Change:** The title of the Director of Acquisition Policy and Contracting changed to Director of Acquisition and Contracting.

**Development, Review, and/or Concurrence:** Manager of Procurement Policy

**Target Audience:** All users of AMS Procurement Guidance

**Potential Links within FAST for the Change:** none

**Briefing Planned:** No

**ASAG Responsibilities:** Approve

**Potential Links within FAST for the Change:** none

**Links for New/Modified Forms (or) Documents (LINK 1)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 2)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 3)** [null](#)

## SECTIONS EDITED:

### Procurement Guidance:

#### *T3.1.4 Delegations*

*Contracting Authority, Delegation, and Unauthorized Commitments*

### **Section 6 : Ratification of Unauthorized Commitments** [\[Old Content\]](#)[\[New Content\]](#)

[\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.2.5 - Contractor Ethical Guidelines*

*Contractor Ethical Guidelines*

### **Section 9 : Whistleblower Protection for Contractor Employees** [\[Old Content\]](#)[\[New](#)

[Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.2.6 - Purchase Card Program*

*Appendix*

### **Section 7 : Measuring the Effectiveness of the FAA Purchase Card Program**

[\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free*

*Workplace*

*Environment, Conservation, Occupational Safety, and Drug Free Workplace*

### **Section 5 : Toxic Chemical Release Reporting** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.6.4 Foreign Acquisition*

*Foreign Acquisition*

### **Section 3 : Buy American Act--Steel and Manufactured Products** [\[Old Content\]](#)[\[New](#)

[Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.8.4 Government Sources of Products/Services*

*Appendix*

### **Section 2 : FAA Procedures for Vending Facility Operations Under**

**Randolph-Sheppard** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.10.4 Quality Assurance*

*Quality Assurance*

### **Section 2 : Responsibilities** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.13.1 Other Administrative Procedures*

*Administrative Matters*

### **Section 12 : Approval of Multiple-Award Procurement Programs** [\[Old Content\]](#)[\[New](#)

[Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

#### *T3.13.1 Other Administrative Procedures*

*Administrative Matters*

### **Section 9 : Reports** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

## SECTIONS EDITED:

## **Section 6 : Ratification of Unauthorized Commitments**

**Old Content:** Procurement Guidance:

*T3.1.4 Delegations*

*Contracting Authority, Delegation, and Unauthorized Commitments*

### **Section 6 : Ratification of Unauthorized Commitments**

a. *General.*

(1) *Contracting Authority.* Only a procurement and real property COs and other qualified individual delegated purchasing authority, acting within the scope of his or her delegated authority, may enter into contracts, leases, or other agreements and may obligate funds on behalf of the Government.

(2) *Unauthorized Commitments.* A contract, lease, or agreement made by an FAA employee, other than a CO and other authorized person, is not binding because the person who made the agreement lacked the authority to commit the Government. An employee without proper authority who commits the Government is acting improperly. The employee will be held accountable and may be disciplined in accordance with Federal Aviation Personnel Manual (FAPM) Letter 2635 and Human Resources Policy Manual (HRPM) ER-4.1, as applicable.

(3) *Organizational Responsibility.* FAA organizations must make every effort to prevent unauthorized commitments. Unauthorized commitments are serious acts of misconduct. Supervisors and managers must ensure each employee is aware of policy and procedures related to unauthorized commitments, and conduct and discipline rules for unauthorized commitments in FAPM Letter 2635 and ER-4.1.

(4) *Ratification.* Although the FAA's policy is to avoid unauthorized commitments, under certain approved circumstances such commitments may be ratified using the procedures in this section and converted into a legal contract.

(5) *Ratifying Official.* The Director of Acquisition Policy and Contracting (AJA-4) at Washington Headquarters has authority to ratify unauthorized commitments. This authority is delegated to the Regional Administrators of each Logistics Service Center and to Center Directors for unauthorized commitments in service areas, regions, and centers. This ratifying authority cannot be delegated below these positions.

(6) *Local Implementation.* All FAA organizations follow the procedures in this section. Logistics Service Area and Center contracting offices, and other organizations, may issue their own implementing procedures if they do not contradict the procedures in this section.

b. *Procedures for Ratification.* When an organization discovers an unauthorized commitment has been made, the organization must take immediate action to ratify the commitment and have the cognizant procurement office convert it to a legal action. Procedures for ratification are:

(1) The supervisor/manager, assisted by the person who committed the unauthorized act, prepares a memorandum of facts containing the following information:

- (a) A detailed description of the circumstances that caused the unauthorized commitment;
- (b) Reasons why normal procurement procedures were not followed;
- (c) A description of the bona fide Government requirement that necessitated the commitment;
- (d) A statement as to the benefit to the agency as a result of the acquisition of the unauthorized supplies or services received;
- (e) The dollar value of the commitment;
- (f) Rationale for the contractor selected and identification of other sources considered;
- (g) The name of the individual who made the unauthorized act;
- (h) A statement regarding the disciplinary action taken to preclude the situation from recurring;
- (i) A specific recommendation that the transaction be approved and ratified;
- (j) A determination that funds are now available and were available at the time the unauthorized commitment was made; and
- (k) Any other pertinent facts including invoices, receiving reports, or other evidence concerning the transaction.

(2) Evidence of available funding should be attached to the memorandum.

(3) The memorandum of facts is signed by the employee who made the unauthorized commitment, and endorsed by the supervisor/manager. By signing the memorandum, the employee attests that the information is accurate and complete. If the employee has left the FAA, then the organization having access to information about the unauthorized commitment prepares the memorandum and it is signed by the former employee's supervisor/manager.

(4) Legal review and concurrence is obtained prior to submitting the memorandum to the ratifying official.

(5) After legal concurrence, the memorandum along with the applicable procurement request (PR) is transmitted to the cognizant procurement office for ratification action.

(6) When the procurement office receives a PR and a properly documented supporting memorandum, the CO makes a written determination, as described below, and forwards the ratification action to the ratifying official.

(a) *CO Determination.* Prior to recommending approval of a ratification and as a part of the CO's review and determination, the CO:

(i) Determines the price to be fair and reasonable;

(ii) Recommends that payment be made;

(iii) Determines that the settlement of the unauthorized commitment would not involve a contract dispute subject to AMS Policy 3.9;

(iv) Determines that the purchase would have been authorized had the purchaser followed established procedures.

(b) If an affirmative determination can be made in all areas of subparagraph (a) above, the CO prepares a memorandum to the ratifying official containing the following information:

(i) A brief description of the unauthorized commitment;

(ii) A statement that prices are fair and reasonable;

(iii) A statement recommending approval of the unauthorized commitment; and

(iv) A copy of all supporting documentation.

(c) If the CO, after legal concurrence, is unable to make an affirmative determination in all areas of subparagraph (a) above, the memorandum to the ratifying official states the CO's reasons that an affirmative determination cannot be made, recommends that the action not be ratified, and offers an alternative solution to resolving the unauthorized commitment.

c. *Notice of Infractions.*

(1) An unauthorized commitment made by an individual is considered a first infraction.

(2) Upon receipt of a request for ratification from an organization, the cognizant Logistics Service Area Division manager at regions, Acquisition Division manager at the Technical Center, Program Director for Acquisition at the Aeronautical Center, or manager of headquarters Contracting Division forwards a notice of infraction to the next level manager/supervisor level above the supervisor/manager who signed the memorandum of facts. The notice advises the second level manager/supervisor that the action violates

Federal law and FAA policy and guidance; reminds him/her of the proper procurement process; offers to provide written material or mini-training sessions (when possible) to orient the organization to the procurement process; requests every effort be made to avoid future violations; and, when appropriate, requests the widest possible distribution of the notice within the organization.

d. *Disciplinary Actions for Making Unauthorized Commitments.*

(1) Individuals who make unauthorized commitments, as well as their immediate supervisor are subject to possible disciplinary actions. The recommended levels of disciplinary penalties for staff, managers, and/or supervisors, for up to three infractions, are contained FAPM Letter 2635 and ER-4.1.

(2) Any unauthorized commitment made by a non-manager/supervisor with the approval of his/her manager/supervisor is an infraction against the manager/supervisor and not the non-manager/supervisor.

(3) The period of accumulation for the above-mentioned infractions by staff, managers, and/or supervisors is 5 years.

e. *Avoiding Ratification.*

(1) When individuals who have not been delegated procurement authority need products or services, or when individuals with delegated procurement authority need products or services estimated to exceed their delegated authority, they must consult with the procurement office for support and guidance to avoid unauthorized commitments.

(2) An unauthorized commitment occurs when someone, other than a CO or other authorized individual, enters into an agreement on behalf of the Government but does not have authority to do so or to obligate the Government.

(3) To avoid a ratification action, an office requiring products or services must ensure that its employees are familiar with the procurement process and are aware of the consequences surrounding unauthorized commitments.

(4) Individuals who have not been delegated procurement authority and who need supplies or services must contact either the person within their organization who has delegated procurement authority or the cognizant procurement office for assistance. The following are examples of types of procurement and areas of the procurement process that may involve individuals outside of the procurement offices, and circumstances in which procurement authority may be delegated to individuals other than a CO. (For more information about procurement methods generally used by individuals outside of the procurement office, see AMS Procurement Toolbox Guidance T3.2.2.5, Commercial and Simplified Purchase Method.)

(a) *Government Purchase Card*. FAA employees may be delegated authority to procure supplies and services using the Government purchase card.

(b) *Blanket Purchase Agreement (BPA)*. A procurement vehicle, awarded by a CO, for ordering supplies or services that may authorize other specific individuals to order supplies or services from the vendor.

(c) *Credit Card Check*. FAA employees delegated purchase authority may use credit card checks when a vendor does not accept the Government purchase card for on-the-spot, over-the-counter purchases of supplies and services.

(5) *Existing Contracts*. Contracting Officer Representative (COR), Contracting Officer Technical Representative (COTR), Resident Engineers, etc., must be careful not to direct the contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless such action is authorized by the CO. It is easy through conversation and during the normal daily interaction with the contractor to inadvertently direct the contractor to perform tasks that result in cost or schedule impact. If such direction is given without the delegated authority, or the express authorization of the CO, the result is an unauthorized commitment.

(6) *Contract Renewals*. Contracts awarded for a base year plus options means that the Government is only committed for the first year or base period. Each option period requires a modification to the contract prior to the beginning of the option period to authorize continued performance. Performance following the initial contract period must not begin until the contract has been properly modified to authorize continued performance. The program or requiring office is responsible for requesting a contract modification of options and providing the funds necessary to continue performance. Individuals who serve as the Government's point of contact on a contract with option provisions should be familiar with the contract terms. Placing an order or directing tasks against an expired contract results in an unauthorized commitment. Prior to the beginning of the option year, if a modification has not been received to extend the contract period, the CO should be contacted for guidance before placing any orders or directing any tasks for that option period.

(7) *Examples*. The following are examples of areas where unauthorized commitments are commonly made:

(a) *Acquiring Conference Space*. After the request for conference space has been coordinated through the local real property office, the requiring office may discuss the requirement with the vendor/hotel to ensure the appropriate accommodations are available. However, the space should not be utilized until the transaction has been approved and an agreement signed by a person with the appropriate procurement authority.

(b) *Training.* Request for training should be submitted to the procurement office in time to enable the requirement to be processed sufficiently in advance of the beginning of the course.

(c) *Professional Speakers or Arbitration Services.* The requiring organization may identify the appropriate speakers or arbitrators and have discussions to ensure the Government's needs will be met. However, the requiring office should not enter into any oral or written agreements on behalf of the Government unless the person making the agreement has the delegated authority to do so. If the requiring office does not have an individual with the delegated authority to enter into an agreement, the request should be submitted to the contracting office for processing.

f. *Exceptions to Infractions.*

(1) In cases of extreme emergencies, such as natural disaster (floods, fires, tornadoes, and hurricanes) or emergencies that may have an immediate impact on the safety of the flying public, an individual may be put in a position of having to obligate the Government's funds in order to preserve life and property. In these instances, if possible, the individual should contact the cognizant procurement office and request that a CO verbally authorize the contractor to proceed in accordance with the emergency procedures outlined in AMS policy 3.2.2.4.1.1.

(2) When the conditions outlined above occur, and the CO cannot be contacted to give a verbal authorization, the memorandum of fact documents the circumstances. It includes a statement that the person who made the unauthorized commitment is exempt from the requirement for disciplinary action.

g. *Waivers.* The Director of Acquisition Policy and Contracting at Washington Headquarters has authority to waive the disciplinary actions when the ratifying official justifies in writing that the unauthorized act does not warrant disciplinary action.

h. *Definitions.*

(1) "Ratification" - an act of approving an unauthorized commitment by an official who has the authority to do so.

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**New Content: Procurement Guidance:**

*T3.1.4 Delegations*

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c.- *Notice of Infractions.*

(1) An unauthorized commitment made by an individual is considered a first infraction.

(2) Upon receipt of a request for ratification from an organization, the cognizant Logistics Service Area Division manager at regions, Acquisition ~~Division~~ *and Grants Group* manager at the Technical Center, Program Director for Acquisition at the Aeronautical Center, or manager of ~~headquarters~~ *Headquarters* Contracting ~~Division~~ *Group* forwards a notice of infraction to the next level manager/supervisor ~~level~~ above the supervisor/manager who signed the memorandum of facts.- The notice advises the second level manager/supervisor that the action violates Federal law and FAA policy and guidance; reminds him/her of the proper procurement process; offers to provide written material or mini-training sessions (when possible) to orient the organization to the procurement process; requests every effort be made to avoid future violations; and, when appropriate, requests the widest possible distribution of the notice within the organization.

d. - *Disciplinary Actions for Making Unauthorized Commitments.*

(1) Individuals who make unauthorized commitments, as well as their immediate supervisor are subject to possible disciplinary actions.- The recommended levels of disciplinary penalties for staff, managers, and/or supervisors, for up to three infractions, are contained FAPM Letter 2635 and ER-4.1.

(2) Any unauthorized commitment made by a non-manager/supervisor with the approval of his/her manager/supervisor is an infraction against the manager/supervisor and not the non-manager/supervisor.

(3) The period of accumulation for the above-mentioned infractions by staff, managers, and/or supervisors is 5 years.

e.- *Avoiding Ratification.*

(1) When individuals who have not been delegated procurement authority need products or services, or when individuals with delegated procurement authority need products or services estimated to exceed their delegated authority, they must consult with the procurement office for support and guidance to avoid unauthorized commitments.

(2) An unauthorized commitment occurs when someone, other than a CO or other authorized individual, enters into an agreement on behalf of the Government but does not have authority to do so or to obligate the Government.

(3) To avoid a ratification action, an office requiring products or services must ensure that its employees are familiar with the procurement process and are aware of the consequences surrounding unauthorized commitments.

(4) Individuals who have not been delegated procurement authority and who need supplies or services must contact either the person within their organization who has delegated procurement authority or the cognizant procurement office for assistance. The following are examples of types of procurement and areas of the procurement process that may involve individuals outside of the procurement offices, and circumstances in which procurement authority may be delegated to individuals other than a CO. (For more information about procurement methods generally used by individuals outside of the procurement office, see AMS Procurement ~~Toolbox~~ Guidance T3.2.2.5, Commercial and Simplified Purchase Method.)

(a) *Government Purchase Card*. FAA employees may be delegated authority to procure supplies and services using the Government purchase card.

(b) *Blanket Purchase Agreement (BPA)*. A procurement vehicle, awarded by a CO, for ordering supplies or services that may authorize other specific individuals to order supplies or services from the vendor.

(c) ~~Credit~~ **Purchase Card Check**. FAA employees delegated purchase authority may use ~~credit~~ **purchase** card checks when a vendor does not accept the Government purchase card for on-the-spot, over-the-counter purchases of supplies and services.

(5) *Existing Contracts*. Contracting Officer Representative (COR), Contracting Officer Technical Representative (COTR), Resident Engineers, etc., must be careful not to direct the contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless such action is authorized by the CO. It is easy through conversation and during the normal daily interaction with the contractor to inadvertently direct the contractor to perform tasks that result in cost or schedule impact. If such direction is given without the delegated authority, or the express authorization of the CO, the result is an unauthorized commitment.

(6) *Contract Renewals*. Contracts awarded for a base year plus options means that the Government is only committed for the first year or base period. Each option period requires a modification to the contract prior to the beginning of the option period to

authorize continued performance.- Performance following the initial contract period must not begin until the contract has been properly modified to authorize continued performance.- The program or requiring office is responsible for requesting a contract modification of options and providing the funds necessary to continue performance.- Individuals who serve as the Government's point of contact on a contract with option provisions should be familiar with the contract terms.- Placing an order or directing tasks against an expired contract results in an unauthorized commitment.- Prior to the beginning of the option year, if a modification has not been received to extend the contract period, the CO should be contacted for guidance before placing any orders or directing any tasks for that option period.

(7) *Examples.* The following are examples of areas where unauthorized commitments are commonly made:

(a) *Acquiring Conference Space.* After the request for conference space has been coordinated through the local real property office, the requiring office may discuss the requirement with the vendor/hotel to ensure the appropriate accommodations are available.- However, the space should not be utilized until the transaction has been approved and an agreement signed by a person with the appropriate procurement authority.

(b) *Training.*- Request for training should be submitted to the procurement office in time to enable the requirement to be processed sufficiently in advance of the beginning of the course.

(c) *Professional Speakers or Arbitration Services.* The requiring organization may identify the appropriate speakers or arbitrators and have discussions to ensure the Government's needs will be met.- However, the requiring office should not enter into any oral or written agreements on behalf of the Government unless the person making the agreement has the delegated authority to do so.- If the requiring office does not have an individual with the delegated authority to enter into an agreement, the request should be submitted to the contracting office for processing.

f.- *Exceptions to Infractions.*

(1) In cases of extreme emergencies, such as natural disaster (floods, fires, tornadoes, and hurricanes) or emergencies that may have an immediate impact on the safety of the flying public, an individual may be put in a position of having to obligate the Government's funds in order to preserve life and property.- In these instances, if possible, the individual should contact the cognizant procurement office and request that a CO verbally authorize the contractor to proceed in accordance with the emergency procedures outlined in AMS policy 3.2.2.4.1.1.

(2) When the conditions outlined above occur, and the CO cannot be contacted to give a verbal authorization, the memorandum of fact documents the circumstances.- It includes a

statement that the person who made the unauthorized commitment is exempt from the requirement for disciplinary action.

g. *Waivers*. The Director of Acquisition ~~Policy~~ and Contracting at Washington Headquarters has authority to waive the disciplinary actions when the ratifying official justifies in writing that the unauthorized act does not warrant disciplinary action.

h. *Definitions*.

(1) "Ratification" - an act of approving an unauthorized commitment by an official who has the authority to do so.

(2) "Unauthorized commitment" - an agreement entered into by a representative of the Government who does not have the authority to enter into agreements on behalf of the Government.

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### **Section 9 : Whistleblower Protection for Contractor Employees**

**Old Content:** Procurement Guidance:

*T3.2.5 - Contractor Ethical Guidelines*

*Contractor Ethical Guidelines*

### **Section 9 : Whistleblower Protection for Contractor Employees**

a. FAA contractors should not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

b. Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against may file a complaint with the Inspector General. Upon completion of the investigation, the Contracting Officer (CO) will ensure that the Inspector General's report of findings is provided to:

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

c. The complainant and the contractor will be afforded the opportunity to submit a written response to the report of findings within 30 days to the contracting officer. Extensions of time to file a written response may be granted by the contracting officer. At any time, the CO may request additional investigative work be done on the complaint.

d. If the CO determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the CO may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal;

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

e. Whenever a contractor fails to comply with an order, the CO should request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

f. Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the CO. Review is to conform to 5 U.S.C. 7.

**New Content: Procurement Guidance:**

*T3.2.5 - Contractor Ethical Guidelines*

*Contractor Ethical Guidelines*

**Section 9 : Whistleblower Protection for Contractor Employees**

a. FAA contractors should not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

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(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The Director of Acquisition and Contracting.

c. The complainant and the contractor will be afforded the opportunity to submit a written response to the report of findings within 30 days to the contracting officer. Extensions of time to file a written response may be granted by the contracting officer. At any time, the CO may request additional investigative work be done on the complaint.

d. If the CO determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the CO may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal;

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or

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f. Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the CO. Review is to conform to 5 U.S.C. 7.

**Red Line Content:** Procurement Guidance:

*T3.2.5 - Contractor Ethical Guidelines*

*Contractor Ethical Guidelines*

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- (1) The complainant and any person acting on the complainant's behalf;
- (2) The contractor alleged to have committed the violation; and
- (3) The ~~head~~ Director of the Acquisition contracting activity and Contracting.

c. The complainant and the contractor will be afforded the opportunity to submit a written response to the report of findings within 30 days to the contracting officer. Extensions of time to file a written response may be granted by the contracting officer. At any time, the CO may request additional investigative work be done on the complaint.

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## **Section 7 : Measuring the Effectiveness of the FAA Purchase Card Program**

**Old Content:** Procurement Guidance:

*T3.2.6 - Purchase Card Program*

*Appendix*

### **Section 7 : Measuring the Effectiveness of the FAA Purchase Card Program**

**1. Purpose.** The purpose of this document is to provide a guidance tool for use when measuring the effectiveness and efficiency of the performance of the FAA Purchase Card Program.

**2. Background.** During March 2003, the General Accounting Office (GAO) issued Report Number GAO-03-405, FAA Purchase Cards: Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets. The GAO report resulted in 27 recommendations to FAA for the enhancement of the purchase card program. In response to Recommendation Number 2, FAA made a commitment to develop metrics for national oversight of the Purchase Card Program. This document contains measurement guidance for use when determining the effectiveness and efficiency of the FAA Purchase Card Program.

**3. Description of FAA Purchase Card Program.** The FAA purchase card is intended to streamline procurement and payment procedures and reduce the administrative burden associated with traditional and emergency purchasing of products and services. The purchase card is used to pay for authorized Government services when vendors accept the card. Credit card checks can be used with vendors that do not accept the purchase card. Credit card checks are not to exceed \$2,500.00. Spending restrictions on the FAA purchase card are contained in the cardholder's delegation of purchasing authority letter (DPA). Criteria for the use of the purchase card and credit card check are contained in the Federal Aviation Administration Acquisition System Toolset (FAST), Procurement Guidance, and Section T3.2.6.

**4. National Purchase Card Program Oversight.** The National Purchase Card Coordinator (NPC) provides monitoring and oversight of the FAA Purchase Card Program in accordance with the Procurement and Information Services Branch's standard operating procedures. The NPC uses the checklist contained in the Federal Aviation Administration System Toolset (FAST), Section T3.2.6, and Appendix 6, to monitor compliance with internal control requirements.

**5. Scope of Measurements.** Program measurements include financial management, internal business processes, and learning completed by APCs,

Cardholders, and approving officials.

**5.1. Financial Management.** Sources include data from the US Bank's database on transactions, financial data from the Department of Transportation, and data from the FAA accounting office. The data is used for measuring cost savings, cost avoidance, reviewing rebates, and analyzing spending trends.

**5.2. Internal Business Processes.** Sources of data include reviewing the FAA purchase card reports that are submitted to OMB on a quarterly basis, reviewing results of APC and approving

official audits, and on-site reviews of internal control procedures. The data is used to obtain information on leveraging purchasing power, cost savings, cost avoidance, and purchase card misuse,

**5.3 Learning.** Sources of data include reviewing the APC's tracking records for cardholders and approving officials initial and refresher training. Cardholders and approving officials are required to meet initial and refresher-training requirements contained in FAST, Section T3.2.2.6, and Sections A.1.e.

**6.0. Base-lining.** The effectiveness and efficiency of the purchase card program will be reported annually by comparing the base line year data for FY-2005, with future years. FY-2005 is selected as the base-line year to coincide with the change of the bank service provider from Bank of America to US Bank.

**7.0. Report.** The FAA Purchase Card Program Performance Report is prepared annually by the National purchase Card Coordinator and submitted to the Director, Office of Acquisition & Contracting through the Manager, Acquisition Planning and Policy Division, ATO-A. The first annual report will be issued in January 2006.

#### **References:**

- The Federal Aviation Administration Acquisition System Toolset (FAST), Section T3.2.6.
- Government-wide Acquisition Performance Measurement Program, issued by Procurement Executive Council, April 2000.
- Proposed Changes to the Procurement Performance Management system, presented to the PMC, May 19, 2004, by the Acquisition Performance Management Committee.
- DOT Procurement Performance (FY 2004 Report for FY2003 Performance Year) Actions, and PMAT data included in the report.
- OMB Circular A-XX, improving the Management of Government-Issued Charge Card Programs
- GA0-03-405, FAA Purchase Cards, Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets, March 2003.
- GAO-04-430, Contract Management, Agencies Can Achieve Significant Savings on Purchase Card Buys, March 2004.

#### **New Content: Procurement Guidance:**

*T3.2.6 - Purchase Card Program*

*Appendix*

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**5. Scope of Measurements.** Program measurements include financial management, internal business processes, and learning completed by APCs,

Cardholders, and approving officials.

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**6.0. Base-lining.** The effectiveness and efficiency of the purchase card program will be reported annually by comparing the base line year data for FY-2005, with future years. FY-2005 is

selected as the base-line year to coincide with the change of the bank service provider from Bank of America to US Bank.

**7.0. Report.** The FAA Purchase Card Program Performance Report is prepared annually by the National purchase Card Coordinator and submitted to the Director, Acquisition and Contracting through the Manager, Acquisition Planning and Policy Division, ATO-A. The first annual report will be issued in January 2006.

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- GAO-03-405, FAA Purchase Cards, Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets, March 2003.
- GAO-04-430, Contract Management, Agencies Can Achieve Significant Savings on Purchase Card Buys, March 2004.

#### **Red Line Content: Procurement Guidance:**

*T3.2.6 - Purchase Card Program*

*Appendix*

#### **Section 7 : Measuring the Effectiveness of the FAA Purchase Card Program**

**1. Purpose.** The purpose of this document is to provide a guidance tool for use when measuring the effectiveness and efficiency of the performance of the FAA Purchase Card Program.

**2. Background.** During March 2003, the General Accounting Office (GAO) issued Report Number GAO-03-405, FAA Purchase Cards: Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets. The GAO report resulted in 27 recommendations to FAA for the enhancement of the purchase card program. In response to Recommendation Number 2, FAA made a commitment to develop metrics for national oversight of the Purchase Card Program. This document contains measurement guidance for use when determining the effectiveness and efficiency of the FAA Purchase Card Program.

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**5. Scope of Measurements.** Program measurements include financial management, internal business processes, and learning completed by APCs,

Cardholders, and approving officials.

**5.1. Financial Management.** Sources include data from the US Bank's database on transactions, financial data from the Department of Transportation, and data from the FAA accounting office. The data is used for measuring cost savings, cost avoidance, reviewing rebates, and analyzing spending trends.

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**5.3 Learning.** Sources of data include reviewing the APC's tracking records for cardholders and approving officials initial and refresher training. Cardholders and approving officials are required to meet initial and refresher-training requirements contained in FAST, Section T3.2.2.6, and Sections A.1.e.

**6.0. Base-lining.** The effectiveness and efficiency of the purchase card program will be reported annually by comparing the base line year data for FY-2005, with future years. FY-2005 is selected as the base-line year to coincide with the change of the bank service provider from Bank of America to US Bank.

**7.0. Report.** The FAA Purchase Card Program Performance Report is prepared annually by the National purchase Card Coordinator and submitted to the Director, ~~Office of~~ Acquisition & #160;and Contracting through the Manager, Acquisition Planning and Policy Division, ATO-A. The first annual report will be issued in January 2006.

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- The Federal Aviation Administration Acquisition System Toolset (FAST), Section T3.2.6.
- Government-wide Acquisition Performance Measurement Program, issued by Procurement Executive Council, April 2000.
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- DOT Procurement Performance (FY 2004 Report for FY2003 Performance Year) Actions, and PMAT data included in the report.
- OMB Circular A-XX, improving the Management of Government-Issued Charge Card Programs
- GA0-03-405, FAA Purchase Cards, Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets, March 2003.
- GAO-04-430, Contract Management, Agencies Can Achieve Significant Savings on Purchase Card Buys, March 2004.

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### **Section 5 : Toxic Chemical Release Reporting**

**Old Content:** Procurement Guidance:

*T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace  
Environment, Conservation, Occupational Safety, and Drug Free Workplace*

### **Section 5 : Toxic Chemical Release Reporting**

a. FAA should purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment. To the greatest extent practicable, FAA should contract with companies that report in a public manner on toxic chemicals released to the environment.

b. SIRs for competitive contracts and non-commercial supplies or services expected to exceed \$100,000 (including all options) must include, as an award eligibility criterion, a certification by the offeror that:

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities the Toxic Chemical Release Inventory Form (Form R) as described in the Emergency Planning and Community Right-to-Know Act (EPCRA) sections 313(a) and (g) and Pollution Prevention Act (PPA) section 6607; or

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities:

(a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(c) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(d) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System (NAICS) sectors:

- (i) Major group code 10 (except 1011, 1081, and 1094).
- (ii) Major group code 12 (except 1241).
- (iii) Major group codes 20 through 39.
- (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
- (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(e) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

c. When it is not practicable to include the Certification of Toxic Chemical Release Reporting in a SIR or class of SIRs, the Chief of the Contracting Office (COCO) must approve a documented rationale. Before making such a determination for a SIR or class of SIRs with an estimated value in excess of \$500,000 (including all options), the COCO must consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.

d. Award should not be made to offerors who do not certify and report toxic chemical release in accordance with EPCRA and PPA requirements. If the facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror fails to notify the CO of this fact, such failure will be considered a minor informality or irregularity.

e. The CO should cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities.

f. EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the COCO that the contract be terminated for convenience. The head of the contracting activity may consider the EPA recommendation and determine if termination or some other action is appropriate.

**New Content: Procurement Guidance:**

*T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace  
Environment, Conservation, Occupational Safety, and Drug Free Workplace*

**Section 5 : Toxic Chemical Release Reporting**

a. FAA should purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment. To the greatest extent practicable, FAA should contract with companies that report in a public manner on toxic chemicals released to the environment.

b. SIRs for competitive contracts and non-commercial supplies or services expected to exceed \$100,000 (including all options) must include, as an award eligibility criterion, a certification by the offeror that:

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities the Toxic Chemical Release Inventory Form (Form R) as described in the Emergency Planning and Community Right-to-Know Act (EPCRA) sections 313(a) and (g) and Pollution Prevention Act (PPA) section 6607; or

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities:

(a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(c) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(d) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System (NAICS) sectors:

- (i) Major group code 10 (except 1011, 1081, and 1094).
- (ii) Major group code 12 (except 1241).
- (iii) Major group codes 20 through 39.
- (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
- (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(e) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

c. When it is not practicable to include the Certification of Toxic Chemical Release Reporting in a SIR or class of SIRs, the Chief of the Contracting Office (COCO) must approve a documented rationale. Before making such a determination for a SIR or class of SIRs with an estimated value in excess of \$500,000 (including all options), the COCO must consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.

d. Award should not be made to offerors who do not certify and report toxic chemical release according to EPCRA and PPA requirements. If the facilities to be used by the offeror to perform the contract are not subject to Form R filing and reporting requirements and the offeror fails to notify the CO of this fact, such failure will be considered a minor informality or irregularity.

e. The CO should cooperate with EPA representatives and provide advice and assistance as may be required to aid EPA perform its responsibilities.

f. Upon determining that a contractor is not filing the necessary forms or is filing incomplete information, EPA may recommend to the COCO that the contract be terminated for convenience. The COCO may consider the EPA recommendation and determine if termination or other action is appropriate.

**Red Line Content: Procurement Guidance:**

*T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace  
Environment, Conservation, Occupational Safety, and Drug Free Workplace*

**Section 5 : Toxic Chemical Release Reporting**

a. FAA should purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment. To the greatest extent practicable, FAA should contract with companies that report in a public manner on toxic chemicals released to the environment.

b. SIRs for competitive contracts and non-commercial supplies or services expected to exceed \$100,000 (including all options) must include, as an award eligibility criterion, a certification by the offeror that:

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities the Toxic Chemical Release Inventory Form (Form R) as described in the Emergency Planning and Community Right-to-Know Act (EPCRA) sections 313(a) and (g) and Pollution Prevention Act (PPA) section 6607; or

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities:

(a) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(b) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(c) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(d) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System (NAICS) sectors:

(i) Major group code 10 (except 1011, 1081, and 1094).

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921),

5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(e) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

c. When it is not practicable to include the Certification of Toxic Chemical Release Reporting in a SIR or class of SIRs, the Chief of the Contracting Office (COCO) must approve a documented rationale. Before making such a determination for a SIR or class of SIRs with an estimated value in excess of \$500,000 (including all options), the COCO must consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.

d. Award should not be made to offerors who do not certify and report toxic chemical release ~~in accordance~~according with EPCRA and PPA requirements. If the facilities to be used by the offeror ~~in the performance~~to perform the contract are not subject to Form R filing and reporting requirements and the offeror fails to notify the CO of this fact, such failure will be considered a minor informality or irregularity.

e. The CO should cooperate with EPA representatives and provide ~~such~~ advice and assistance as may be required to aid EPA ~~in the performance of~~perform its responsibilities.

f. ~~EPA, upon~~Upon determining that a contractor is not filing the necessary forms or is filing incomplete information, EPA may recommend to the COCO that the contract be terminated for convenience. The ~~head of the contracting activity~~COCO may consider the EPA recommendation and determine if termination or ~~some~~ other action is appropriate.

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### **Section 3 : Buy American Act--Steel and Manufactured Products**

**Old Content:** Procurement Guidance:

*T3.6.4 Foreign Acquisition*

*Foreign Acquisition*

### **Section 3 : Buy American Act--Steel and Manufactured Products**

a. This section implements the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990), and Pub. L. 102-581, The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Title I, Sec. 103 and 104, (FAA Buy American) as these apply to the obligation of funds made available in appropriations after November 5, 1990.

b. Pursuant to Pub. L. 101-508, and notwithstanding any other provision of law, the CO will not obligate any funds authorized to be appropriated for any project unless steel and manufactured

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products used in such projects are produced in the United States. Projects funded by the Research, Engineering and Development appropriation are excluded from this provision.

c. The Administrator delegated all authority under subparagraph 3.a. to the heads of contracting activities (Director of Acquisition Policy and Contracting; Regional Administrators; and Center Directors. These individuals have authority to waive application the FAA Buy American when finding that:

(1) Application would be inconsistent with the public interest;

(2) Such materials and products are not produced in the United States in sufficient and reasonable available quantities and of a satisfactory quality;

(3) In the case of the acquisition of facilities and equipment under the Airport and Airway Improvement Act of 1982:

(a) The cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project; and

(b) Final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

d. There is no restriction against a company offering foreign steel or manufactured products in its proposal. The FAA, however, may not award to that company unless it is pursuant to one of the exceptions listed under paragraph c. above.

e. For the purposes of this section, in calculating components costs, labor costs involved in final assembly will not be included in the calculation.

f. Any acquisition of steel or manufactured products of the FAA not subject to Pub. L. 101-508 should be treated as covered under the Buy American Act (unless a Buy American Act exception applies). In the event of a conflict, the "Buy American-Steel and Manufactured Products" clause will take precedence over other Buy American Act-related clauses.

**New Content: Procurement Guidance:**

*T3.6.4 Foreign Acquisition*

*Foreign Acquisition*

**Section 3 : Buy American Act--Steel and Manufactured Products**

a. This section implements the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101-508, the Omnibus Budget

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Reconciliation Act of 1990), and Pub. L. 102-581, The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Title I, Sec. 103 and 104, (FAA Buy American) as these apply to the obligation of funds made available in appropriations after November 5, 1990.

b. Pursuant to Pub. L. 101-508, and notwithstanding any other provision of law, the CO will not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States. Projects funded by the Research, Engineering and Development appropriation are excluded from this provision.

c. The Administrator delegated all authority under subparagraph 3.a. to the Headquarters Director of Acquisition and Contracting; Regional Administrators; and Center Directors. These individuals have authority to (i) further delegate this authority to Contracting Officers; and (ii) waive application of the Buy American Act when finding that:

(1) Application would be inconsistent with the public interest;

(2) Such materials and products are not produced in the United States in sufficient and reasonable available quantities and of a satisfactory quality;

(3) In the case of the acquisition of facilities and equipment under the Airport and Airway Improvement Act of 1982:

(a) The cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project; and

(b) Final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

d. There is no restriction against a company offering foreign steel or manufactured products in its proposal. The FAA, however, may not award to that company unless it is pursuant to one of the exceptions listed under paragraph c. above.

e. For the purposes of this section, in calculating components costs, labor costs involved in final assembly will not be included in the calculation.

f. Any acquisition of steel or manufactured products of the FAA not subject to Pub. L. 101-508 should be treated as covered under the Buy American Act (unless a Buy American Act exception applies). In the event of a conflict, the "Buy American-Steel and Manufactured Products" clause will take precedence over other Buy American Act-related clauses.

**Red Line Content: Procurement Guidance:**

*T3.6.4 Foreign Acquisition*

*Foreign Acquisition*

**Section 3 : Buy American Act--Steel and Manufactured Products**

a. This section implements the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990), and Pub. L. 102-581, The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Title I, Sec. 103 and 104, (FAA Buy American) as these apply to the obligation of funds made available in appropriations after November 5, 1990.

b. Pursuant to Pub. L. 101-508, and notwithstanding any other provision of law, the CO will not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States. Projects funded by the Research, Engineering and Development appropriation are excluded from this provision.

c. The Administrator delegated all authority under subparagraph 3.a. to the ~~heads~~ Headquarters of contracting activities (Director of Acquisition ~~Policy~~ and Contracting; Regional Administrators; and Center Directors. These individuals have authority to (i) further delegate this authority to Contracting Officers; and (ii) waive application of the ~~FAA~~ Buy American Act when finding that:

(1) Application would be inconsistent with the public interest;

(2) Such materials and products are not produced in the United States in sufficient and reasonable available quantities and of a satisfactory quality;

(3) In the case of the acquisition of facilities and equipment under the Airport and Airway Improvement Act of 1982:

(a) The cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project; and

(b) Final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

d. There is no restriction against a company offering foreign steel or manufactured products in its proposal. The FAA, however, may not award to that company unless it is pursuant to one of the exceptions listed under paragraph c. above.

e. For the purposes of this section, in calculating components costs, labor costs involved in final assembly will not be included in the calculation.

f. Any acquisition of steel or manufactured products of the FAA not subject to Pub. L. 101-508 should be treated as covered under the Buy American Act (unless a Buy American Act exception applies). In the event of a conflict, the "Buy American-Steel and Manufactured Products" clause will take precedence over other Buy American Act-related clauses.

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## **Section 2 : FAA Procedures for Vending Facility Operations Under Randolph-Sheppard**

**Old Content:** Procurement Guidance:

*T3.8.4 Government Sources of Products/Services*

*Appendix*

## **Section 2 : FAA Procedures for Vending Facility Operations Under Randolph-Sheppard**

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending facilities.

2. RESPONSIBILITY. The Managers of the Logistics Service Areas, Program Director for Acquisition Services at the Aeronautical Center, and Manager of Acquisition, Materiel and Grants at the William J. Hughes Technical Center are responsible for administering the FAA vending facility program at facilities within their geographical jurisdictions.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act shall be afforded priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by the FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

### **4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.**

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining if it is feasible to rely on nearby food establishments in lieu of establishing vending facilities on property controlled and occupied by FAA.

(1) Accessibility. Such food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, the FAA may establish a vending facility if the following prerequisites, documented in writing, are met:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient, satisfactory, space must be available.

(3) Funding. Sufficient funds must be available to the FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of agency employees while on duty.

(5) Codes. It shall be possible to establish and operate each vending facility in conformance with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult the FAA legal counsel's office regarding any vested title to equipment.

#### 6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the assigned contractor officer that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to State licensing agencies for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions thereof will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. **BONDS.** At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a Performance Bond to guarantee the faithful performance of his obligations under the contract. The Performance Bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. **INSURANCE.** All contracts will include the clause for contractor liability insurance.

10. **HOURS OF SERVICE** will be determined on a case-by-case basis by the Contracting Officer and the appropriate Facility Manager.

11. **MONETARY RECEIPTS.** received by the Government from Operators for space, utilities, and other services will be deposited into the U. S. Treasury as Miscellaneous Receipts, via the serving Accounting Division.

12. **AUDIT.** The Contracting Officer should arrange periodic spot reviews and audits during the term of agreement.

13. **JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES.** are subject to the Exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. **ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY.**

Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

#### 15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with Logistics Service Area Managers, Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants, who will be the designated contact point for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

#### 16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as delineated in 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

#### 17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and

services, machines providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a.) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b.) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

#### b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA-controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist,

the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b.) Fifty percent of the vending machine income from vending machines not in "direct competition: with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c.) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed \$3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, SLA agencies shall be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The Logistics Service Area Managers, Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants, or their designated representatives, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator shall provide the Logistics Service Area Manager,

Program Director for Acquisition Services, or Manager of Acquisition, Materiel, and Grants, or their designated representatives, with a quarterly certified statement showing that such action has been taken. The first payment of income shall be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility shall be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

#### 18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by the Logistics Service Area Manager, Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants.

c. Review of the permit. Upon receipt of a permit, the Logistics Service Area Manager, Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants, or their representative, will.

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large manned facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to Logistics Service Area for approval. Logistics Service Area would make determination for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on

the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

#### 19. TERMS OF THE PERMIT.

a. The permit will be issued in the name of the applicant SLA.

b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit will provide that:

(1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the Logistics Service Area Manager, Program Director for Acquisition Services, or Manager of Acquisition, Materiel, and Grants to be suitable for a particular location.

(4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the Logistics Service Area Manager, Program Director for Acquisition Services, or Manager of Acquisition, Materiel, and Grants, and the SLA.

Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the appropriate Logistics Service Area or Acquisition Services Managers will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action with a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with regional or center Legal Counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by a Logistics Service Area Manager, Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants, two copies of the approved permit shall be forwarded to the SLA. The original permit will be retained in the region or center.

## 20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1). FAA regions and centers may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a), to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting

Officer may also award to other than the SLA if the Regional or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the appropriate Logistics Service Area Manager, or Program Director for Acquisition Services, or Manager of Acquisition, Materiel and Grants, and Regional or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to-operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following.

- a. Submission of detailed quarterly income statements (see Figure 2-1).
- b. Provision of all necessary supplemental cafeteria equipment and utensils.
- c. Performance of preventive maintenance on all Government-owned equipment.
- d. Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

## 21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.

c. The Secretary of Education will pay all reasonable costs of arbitration.

## 22. REPORTING REQUIREMENTS.

a. At the end of each fiscal year, the FAA is required to submit a report to the Secretary of Education pursuant to Department of Education regulations (34 CFR 395.38). In order to comply with this requirement, each service area, region and center will submit a report to Headquarters Procurement Information and Services (AJA-432) on or before November 1 of each year. The report will include the following data:

(1) Total number of applications received.

(2) Number of applications accepted.

(3) Number of applications denied.

(4) Number of applications pending.

b. Vending machine income with the following breakdown:

(1) Total amount of vending machine income collected in each state.

(2) Amount of vending machine income distributed to each SLA.

## 23. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS.

**AUTHORITY.** The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, and (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

24. DETERMINATION AND FINDING. A written determination which justifies negotiations with an employee welfare by the Contracting Officer, approved by the appropriate Logistics Service Area Manager, Program Director for Acquisitions, or Manager of Acquisition, Materiel and Grants, and placed in the contract file.

25. REREQUISITES. Negotiations with an employee association will be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.

e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.

f. Any remaining income derived from the vending facility operation will be used for the benefit of the employee association's welfare activities.

g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

26. TYPES OF CONTRACT (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1). location.

(2) amount of space necessary for the operation of the vending facility.

(3). type of facility and equipment.

(4) number, location and type of vending machines and other terms and conditions to be included in the permit

## 27. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.

c. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract

(3) Management.

(4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

Figure 2-1. INCOME STATEMENT

PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_  
DATE DATE

SALES

Food

Vending Machines

TOTAL INCOME FROM SALES

COST OF GOODS SOLD

Inventory

Purchases

Total

Inventory

TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD

Accounting & Legal

Depreciation

Interest & Penalties

Laundry

Miscellaneous

Payroll Taxes

Other Taxes- Unempl.Tax

Sales Tax

Repair & Maintenance

Rent

Salaries

Supplies - Office

Cleaning

Kitchen

Telephone

TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Payments shall be mailed in accordance with the provisions of the contract

Amount Due Federal Aviation Administration Paid by Check No. \_\_\_\_\_ in the amount of

\_\_\_\_\_

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION' S

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INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. \_\_\_\_\_ DATE \_\_\_\_\_

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, \_\_\_\_\_ (address) \_\_\_\_\_ intends to acquire or otherwise occupy \_\_\_\_\_ square feet of space in which \_\_\_\_\_ Federal Government employees are or will be located during normal working hours, in \_\_\_\_\_.

(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice is hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days from the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than \_\_\_\_\_ date \_\_\_\_\_. Your prompt attention to this matter will be appreciated.

\_\_\_\_\_  
Signer's Name (Type or Print)

\_\_\_\_\_  
Signature

CHECK APPROPRIATE BOX

- We are interested in establishing a vending facility in connection with the proposed acquisition.
- We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.

\_\_\_\_\_  
Approval Official (Type or Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (Type or Print)

\_\_\_\_\_  
Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

\_\_\_\_\_  
and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR PERMIT

DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORIZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The \_\_\_\_\_ (designated State Licensing Agency) of the State of \_\_\_\_\_ requests approval of \_\_\_\_\_ (Federal or other property Agency/Owner) to place a vending facility on the property located \_\_\_\_\_.

SATISFACTORY SITE: It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

TYPE, LOCATION AND SIZE OF FACILITY: Type of facility: \_\_\_\_\_

Facility location \_\_\_\_\_. The facility will operate days of the week from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. commencing on \_\_\_\_\_.

MACHINE INCOME SHARING: Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

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Approving FAA Official

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Approving Licensing Agency

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Title

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Date

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Title

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Date

Figure 2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. GOVERNMENT-OPERATOR RELATIONSHIP. Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. FEDERAL, STATE, AND LOCAL LAW. The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

#### 6. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract, in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government's termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. FAIR LABOR STANDARDS ACT. (Public Law 93A259, enacted April 8,1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.)) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. SECURITY. The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator's employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they

have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, because for termination of this contract for default.

#### 12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at its sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted from the facility.

#### 14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

## 15. INSPECTIONS

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; and any unsafe conditions found by such official will be immediately corrected by the operator

## 16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator. If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice from the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may deem significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily and

all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

17. RESPONSIBILITIES OF THE GOVERNMENT. The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam, sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

18. RESPONSIBILITIES OF TO OPERATOR.

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assigned for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements, all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

19. EMPLOYEE OF OPERATOR.

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a. The Operator will employ a full-time qualified manager during the hours of \_\_\_\_\_ days a week. In addition, the Operator will employ \_\_\_\_\_ full-time working supervisors during each shift, \_\_\_\_\_ a day, and \_\_\_\_\_ days a week or a representative of the Operator at times other than those specified here. If the above supervisors, will visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Officer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator shall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator's manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator will pay all employees not less frequently than once every two weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.

l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation

n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the Contract

## 20. PAYMENT TO THE GOVERNMENT.

a. Payment of \$\_\_\_\_\_ to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.

b. All payments will be mailed to the Chief, Accounting Division,

located at \_\_\_\_\_.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

## 21. EQUIPMENT.

a. Equipment to be provided by the Government. The Government will provide and the Operator may cause the equipment listed herein. The Government will also:

(1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and

(2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less than 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep fat fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free from grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

c. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs or replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

d. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

e. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

## 22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

## 23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

## 24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending

3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

25. ACCOUNTING DATA. The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.

**New Content: Procurement Guidance:**

*T3.8.4 Government Sources of Products/Services*

*Appendix*

**Section 2 : FAA Procedures for Vending Facility Operations Under Randolph-Sheppard**

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending facilities.

2. RESPONSIBILITY. The Chief of the Contracting Office (COCO) at Logistics Service Areas and Aeronautical Center, and Manager of Acquisition and Grants Group at the Technical Center administer FAA's vending facility program at facilities within their geographical jurisdictions.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act must have priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

**4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.**

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining feasibility of relying on nearby food establishments in lieu of establishing vending facilities on FAA-controlled and occupied property:

(1) Accessibility. Food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, FAA may establish a vending facility if the following prerequisites are met and documented in writing:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient and satisfactory space must be available.

(3) Funding. Sufficient funds must be available to FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of FAA employees while on duty.

(5) Codes. It must be possible to establish and operate each vending facility conforming with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult the FAA legal counsel's office regarding any vested title to equipment.

#### 6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the Contracting Officer that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to SLAs for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a performance bond to guarantee the faithful performance of his obligations under the contract. The performance bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. INSURANCE. All contracts will include the clause for contractor liability insurance.

10. HOURS OF SERVICE. Hours will be determined on a case-by-case basis by the Contracting Officer and the appropriate facility manager.

11. MONETARY RECEIPTS. Monies received by the Government from operators for space, utilities, and other services will be deposited into the U. S. Treasury as miscellaneous receipts, via the servicing Accounting Division.

12. AUDIT. The Contracting Officer should arrange periodic spot reviews and audits during the term of agreement.

13. JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES. Facilities are subject to the exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY. Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with the applicable COCO/Manager Acquisition and Grant Group who will be the designated contact points for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

#### 16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as stated in paragraph 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

#### 17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and

services, machines providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a.) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b.) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

#### b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA-controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist,

the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b.) Fifty percent of the vending machine income from vending machines not in "direct competition: with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c.) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed \$3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, SLA agencies shall be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The COCOs/Manager of Acquisition and Grant Group, or their designated representatives, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator must provide the COCO/Manager Acquisition and Grant Group or their designated representatives, with a quarterly certified statement

showing that such action has been taken. The first payment of income shall be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility shall be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

#### 18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by COCO/Manager Acquisition and Grant Group.

c. Review of the permit. Upon receipt of a permit, COCO/Manager Acquisition and Grant Group or their representative, will.

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large manned facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to COCO for approval. The COCO would make determination for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

#### 19. TERMS OF THE PERMIT.

- a. The permit will be issued in the name of the applicant SLA.
- b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.
- c. The permit will provide that:
  - (1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.
  - (2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.
  - (3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the COCO/Manager Acquisition and Grant Group, to be suitable for a particular location.
  - (4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.
  - (5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the COCO/Manager Acquisition and Grant Group and the SLA. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the appropriate COCO/Manager Acquisition and Grant Group will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action with a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with regional or center Legal Counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by a COCO/Manager Acquisition and Grant Group, two copies of the approved permit must be forwarded to the SLA. The original permit will be retained in the region or center.

## 20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1). FAA may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a) to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting Officer may also award to other than the SLA if the Regional or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the appropriate COCO/Manager Acquisition and Grants Group and Regional or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to-operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following.

a. Submission of detailed quarterly income statements (see Figure 2-1).

b. Provision of all necessary supplemental cafeteria equipment and utensils.

c. Performance of preventive maintenance on all Government-owned equipment.

d. Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

## 21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and

Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.

c. The Secretary of Education will pay all reasonable costs of arbitration.

## 22. REPORTING REQUIREMENTS.

a. At the end of each fiscal year, the FAA is required to submit a report to the Secretary of Education pursuant to Department of Education regulations (34 CFR 395.38). To comply with this requirement, each COCO and Manager Acquisition and Grants Group will submit a report to Headquarters Procurement Information and Services (AJA-A12) on or before November 1 of each year. The report will include the following data:

(1) Total number of applications received.

(2) Number of applications accepted.

(3) Number of applications denied.

(4) Number of applications pending.

b. Vending machine income with the following breakdown:

(1) Total amount of vending machine income collected in each state.

(2) Amount of vending machine income distributed to each SLA.

## 23. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS.

**AUTHORITY.** The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, and (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

**24. DETERMINATION AND FINDING.** A written determination which justifies negotiations with an employee welfare by the Contracting Officer, approved by the appropriate COCO/Manager Acquisition and Grant Group and placed in the contract file.

25. REREQUISITES. Negotiations with an employee association will be based upon the following prerequisites:

- a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.
- b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.
- c. Prior to commencement of negotiation with an employee association, the association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.
- d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.
- e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.
- f. Any remaining income derived from the vending facility operation will be used for the benefit of the employee association's welfare activities.
- g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

26. TYPES OF CONTRACT (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1). location.

(2) amount of space necessary for the operation of the vending facility.

(3). type of facility and equipment.

(4) number, location and type of vending machines and other terms and conditions to be included in the permit

## 27. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.

c. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract

(3) Management.

(4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

#### Figure 2-1. INCOME STATEMENT

PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_  
DATE DATE

SALES  
Food

Vending Machines  
TOTAL INCOME FROM SALES

COST OF GOODS SOLD

Inventory  
Purchases  
    Total  
Inventory  
TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD

    Accounting & Legal  
    Depreciation  
    Interest & Penalties  
    Laundry  
    Miscellaneous  
    Payroll Taxes  
Other Taxes- Unempl.Tax  
            Sales Tax

Repair & Maintenance

Rent

Salaries

Supplies - Office

    Cleaning

    Kitchen

Telephone

TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Payments shall be mailed in accordance with the provisions of the contract

Amount Due Federal Aviation Administration Paid by Check No. \_\_\_\_\_ in the amount of

\_\_\_\_\_

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION'S

INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

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NOTICE NO. \_\_\_\_\_ DATE \_\_\_\_\_

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, \_\_\_\_\_ (address) \_\_\_\_\_ intends to acquire or otherwise occupy \_\_\_\_\_ square feet of space in which \_\_\_\_\_ Federal Government employees are or will be located during normal working hours, in \_\_\_\_\_.

(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice is hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days from the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than date. Your prompt attention to this matter will be appreciated.

\_\_\_\_\_  
Signer's Name (Type or Print)

\_\_\_\_\_  
Signature

CHECK APPROPRIATE BOX

We are interested in establishing a vending facility in connection with the proposed acquisition.

We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.

\_\_\_\_\_  
Approval Official (Type or Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (Type or Print)

\_\_\_\_\_  
Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

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and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR PERMIT

DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORIZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The \_\_\_\_\_ (designated State Licensing Agency) of the State of \_\_\_\_\_ requests approval of \_\_\_\_\_ (Federal or other property Agency/Owner) to place a vending facility on the property located \_\_\_\_\_.

SATISFACTORY SITE: It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

TYPE, LOCATION AND SIZE OF FACILITY: Type of facility: \_\_\_\_\_

Facility location \_\_\_\_\_. The facility will operate days of the week from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. commencing on \_\_\_\_\_.

MACHINE INCOME SHARING: Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

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Approving FAA Official

---

Approving Licensing Agency

Title	Date	Title	Date
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Figure 2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may

wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. GOVERNMENT-OPERATOR RELATIONSHIP. Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. FEDERAL, STATE, AND LOCAL LAW. The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

#### 6. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract. in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government's termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. FAIR LABOR STANDARDS ACT. (Public Law 93A259, enacted April 8,1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.)) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. SECURITY. The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator's employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, be cause for termination of this contract for default.

#### 12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at its sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted from the facility.

#### 14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

#### 15. INSPECTIONS

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a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; and any unsafe conditions found by such official will be immediately corrected by the operator

## 16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator. If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice from the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may deem significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily and all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

17. RESPONSIBILITIES OF THE GOVERNMENT. The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam, sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

18. RESPONSIBILITIES OF TO OPERATOR.

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assigned for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements? all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

19. EMPLOYEE OF OPERATOR.

a. The Operator will employ a full-time qualified manager during the hours of \_\_\_\_\_ days a week. In addition, the Operator will employ \_\_\_\_\_ full-time working supervisors during each shift, \_\_\_\_\_ a day, and \_\_\_\_\_ days a week or a representative of the Operator at times other than those specified here. If the above supervisors, will visit the facility monthly for

general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Officer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator shall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator's manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

- j. The Operator will pay all employees not less frequently than once every two weeks, without deduction or rebate on any account, except as provided or allowed by law.
- k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.
- l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.
- m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation
- n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.
- o. Violations of the foregoing responsibilities may result in termination of the Contract

## 20. PAYMENT TO THE GOVERNMENT.

- a. Payment of \$\_\_\_\_\_ to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.
- b. All payments will be mailed to the Chief, Accounting Division,  
located at \_\_\_\_\_.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

## 21. EQUIPMENT.

- a. Equipment to be provided by the Government. The Government will provide and the Operator may cause the equipment listed herein. The Government will also:
  - (1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and
  - (2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.
- b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the

Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less than 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

- (1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.
- (2) Keep the deep fat fryer and toaster clean and in serviceable condition.
- (3) Keep the canopy free from grease and thoroughly clean.
- (4) Clean air filters daily and grease traps for the dishwasher and sink when required.

c. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs or replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

d. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

e. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

## 22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in

the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

### 23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

### 24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending 3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

25. ACCOUNTING DATA. The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.

**Red Line Content: Procurement Guidance:**

*T3.8.4 Government Sources of Products/Services*

*Appendix*

**Section 2 : FAA Procedures for Vending Facility Operations Under Randolph-Sheppard**

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending facilities.

2. RESPONSIBILITY. The ~~Managers~~ Chief of the Contracting Office (COCO) at Logistics Service Areas; and Program Director for Acquisition Services at the Aeronautical Center, and Manager ~~of Acquisition, Materiel and Grants~~ Group at the William J. Hughes Technical Center ~~are responsible for administering the~~ administer FAA's vending facility program at facilities within their geographical jurisdictions.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act ~~shall be afforded~~ must have priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by ~~the~~ FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining ~~if it is feasible to~~ feasibility rely of relying on nearby food establishments in ~~lieu of establishing vending facilities on~~ property ~~FAA-~~ controlled and occupied ~~by FAA-~~ property:

(1) Accessibility. ~~Such food~~ Food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, ~~the~~ FAA may establish a vending facility if the following prerequisites, are met and documented in writing, ~~are met~~:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient, and satisfactory, space must be available.

(3) Funding. Sufficient funds must be available to ~~the~~ FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of agency ~~FAA~~ employees while on duty.

(5) Codes. It ~~shall~~ must be possible to establish and operate each vending facility ~~in conformance~~ conforming with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult the FAA legal counsel's office regarding any vested title to equipment.

#### 6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the ~~assigned contractor~~ Contracting officer ~~Officer~~ that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to ~~State licensing agencies~~ SLAs for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions ~~thereof~~ will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a ~~Performance Bond~~ performance bond to guarantee the faithful performance of his obligations under the contract. The ~~Performance~~ performance ~~Bond~~ bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. INSURANCE. All contracts will include the clause for contractor liability insurance.

10. HOURS OF SERVICE. Hours will be determined on a case-by-case basis by the Contracting Officer and the appropriate ~~Facility Manager~~ facility manager.

11. MONETARY RECEIPTS. Monies received by the Government from ~~Operators~~ operators for space, utilities, and other services will be deposited into the U. S. Treasury as ~~Miscellaneous~~ miscellaneous ~~Receipts~~ receipts, via the ~~servicing~~ servicing Accounting Division.

12. AUDIT. The Contracting Officer should arrange periodic spot reviews and audits during the term of agreement.

13. JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES. Facilities are subject to the ~~Exemptions~~ exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY.- Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with ~~Logistics Service Area Managers, Program Director for Acquisition Services,~~ the applicable COCO/Manager of Acquisition, ~~Materiel and Grants,~~ Grant Group who will be the designated contact ~~point~~ points for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

#### 16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as ~~delineated~~ stated in paragraph 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

#### 17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and

services, machines providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a.) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b.) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

#### b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA-controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist,

the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b.) Fifty percent of the vending machine income from vending machines not in "direct competition: with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c.) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed \$3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, SLA agencies shall be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The ~~Logistics Service Area Managers, Program Director for Acquisition Services, or COCOs~~/Manager of ~~Acquisition, Materiel~~Acquisiton and ~~Grants~~Grant Group, or their designated representatives, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator ~~shall~~must provide the ~~Logistics Service~~

~~Area Manager, Program Director for Acquisition Services, or COCO/~~Manager of Acquisition, ~~Materiel,~~ and ~~Grants,~~Grant Group or their designated representatives, with a quarterly certified statement showing that such action has been taken. The first payment of income shall be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility shall be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

#### 18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by ~~the Logistics Service Area Manager, Program Director for Acquisition Services, or COCO/~~Manager of Acquisition, ~~Materiel~~ and ~~Grants,~~Grant Group.

c. Review of the permit. Upon receipt of a permit, ~~the Logistics Service Area Manager, Program Director for Acquisition Services, or COCO/~~Manager of Acquisition, ~~Materiel~~ and ~~Grants,~~Grant Group or their representative, will.

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large manned facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to ~~Logistics Service Area~~COCO for approval. ~~Logistics Service Area~~ The COCO would make determination

for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

#### 19. TERMS OF THE PERMIT.

a. The permit will be issued in the name of the applicant SLA.

b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit will provide that:

(1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the ~~Logistics Service Area Manager, Program Director for Acquisition Services, or COCO/~~Manager of Acquisition, ~~Materiel,~~ and ~~Grants~~**Grant Group**, to be suitable for a particular location.

(4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the ~~Logistics Service Area Manager, Program Director~~

~~for Acquisition Services, or COCO/~~Manager of Acquisition, Materiel, and Grants, Grant Group and the SLA. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the appropriate ~~Logistics~~COCO/Manager Service Area or AcquisitionAcquisition and Grant Group Services Managers will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action with a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with regional or center Legal Counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by a ~~Logistics Service Area Manager, Program Director for Acquisition Services, or COCO/~~Manager of Acquisition, Materiel and Grants Grant Group, two copies of the approved permit ~~shall~~must be forwarded to the SLA. The original permit will be retained in the region or center.

## 20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1). FAA ~~regions and centers~~ may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a); to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting Officer may also award to other than the SLA if the Regional or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the appropriate ~~Logistics Service Area~~ COCO/Manager, ~~or Program Director for Acquisition Services, or Manager of Acquisition, Materiel~~ and Grants, Group and Regional or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to-operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following.

- a. Submission of detailed quarterly income statements (see Figure 2-1).
- b. Provision of all necessary supplemental cafeteria equipment and utensils.
- c. Performance of preventive maintenance on all Government-owned equipment.
- d. Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

## 21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

- a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.
- b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.
- c. The Secretary of Education will pay all reasonable costs of arbitration.

## 22. REPORTING REQUIREMENTS.

- a. At the end of each fiscal year, the FAA is required to submit a report to the Secretary of Education pursuant to Department of Education regulations (34 CFR 395.38). ~~In order to~~ **Tto** comply with this requirement, each ~~service~~ **COCO area, and region** ~~Manager Acquisition~~ and ~~center~~ **Grants Group** will submit a report to Headquarters Procurement Information and Services (AJA-~~432~~ **A12**) on or before November 1 of each year. The report will include the following data:
  - (1) Total number of applications received.
  - (2) Number of applications accepted.
  - (3) Number of applications denied.
  - (4) Number of applications pending.
- b. Vending machine income with the following breakdown:
  - (1) Total amount of vending machine income collected in each state.
  - (2) Amount of vending machine income distributed to each SLA.

## 23. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS.

AUTHORITY. The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, and (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all

proposals received are unacceptable and not susceptible to upgrading through further negotiations.

24. DETERMINATION AND FINDING. A written determination which justifies negotiations with an employee welfare by the Contracting Officer, approved by the appropriate ~~Logistics Service Area Manager, Program Director for Acquisitions, or~~ COCO/Manager of Acquisition; ~~Materiel and Grants,~~ Grant Group and placed in the contract file.

25. REREQUISITES. Negotiations with an employee association will be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.

e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.

f. Any remaining income derived from the vending facility operation will be used for the benefit of the employee association's welfare activities.

g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

26. TYPES OF CONTRACT (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1). location.

(2) amount of space necessary for the operation of the vending facility.

(3). type of facility and equipment.

(4) number, location and type of vending machines and other terms and conditions to be included in the permit

## 27. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.

c. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract

(3) Management.

(4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

Figure 2-1. INCOME STATEMENT

PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_  
DATE DATE

SALES

Food

Vending Machines

TOTAL INCOME FROM SALES

COST OF GOODS SOLD

Inventory

Purchases

Total

Inventory

TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD

Accounting & Legal

Depreciation

Interest & Penalties

Laundry

Miscellaneous

Payroll Taxes

Other Taxes- Unempl.Tax

Sales Tax

Repair & Maintenance

Rent

Salaries

Supplies - Office

Cleaning

Kitchen

Telephone

TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Payments shall be mailed in accordance with the provisions of the contract

Amount Due Federal Aviation Administration Paid by Check No. \_\_\_\_\_ in the amount of

\_\_\_\_\_

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION' S

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INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. \_\_\_\_\_ DATE \_\_\_\_\_

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, \_\_\_\_\_ (address) \_\_\_\_\_ intends to acquire or otherwise occupy \_\_\_\_\_ square feet of space in which \_\_\_\_\_ Federal Government employees are or will be located during normal working hours, in \_\_\_\_\_.

(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice is hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days from the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than \_\_\_\_\_ date \_\_\_\_\_. Your prompt attention to this matter will be appreciated.

\_\_\_\_\_  
Signer's Name (Type or Print)

\_\_\_\_\_  
Signature

CHECK APPROPRIATE BOX

- We are interested in establishing a vending facility in connection with the proposed acquisition.
- We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.

\_\_\_\_\_  
Approval Official (Type or Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (Type or Print)

\_\_\_\_\_  
Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

\_\_\_\_\_  
and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR PERMIT

DEPARTMENT OF EDUCATION-OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORIZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The \_\_\_\_\_ (designated State Licensing Agency) of the State of \_\_\_\_\_ requests approval of \_\_\_\_\_ (Federal or other property Agency/Owner) to place a vending facility on the property located \_\_\_\_\_.

**SATISFACTORY SITE:** It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

**TYPE, LOCATION AND SIZE OF FACILITY:** Type of facility: \_\_\_\_\_

Facility location \_\_\_\_\_. The facility will operate days of the week from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. commencing on \_\_\_\_\_.

**MACHINE INCOME SHARING:** Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

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Approving FAA Official

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Approving Licensing Agency

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Title

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Date

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Title

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Date

Figure-2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. GOVERNMENT-OPERATOR RELATIONSHIP. Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. FEDERAL, STATE, AND LOCAL LAW. The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

#### 6. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract, in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof. Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government's termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. FAIR LABOR STANDARDS ACT. (Public Law 93A259, enacted April 8,1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.)) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. SECURITY. The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator's employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they

have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, because for termination of this contract for default.

#### 12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at its sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted from the facility.

#### 14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

## 15. INSPECTIONS

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; and any unsafe conditions found by such official will be immediately corrected by the operator

## 16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator. If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice from the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may deem significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily and

all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

17. RESPONSIBILITIES OF THE GOVERNMENT. The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam, sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

18. RESPONSIBILITIES OF TO OPERATOR.

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assigned for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements? all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

19. EMPLOYEE OF OPERATOR.

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a. The Operator will employ a full-time qualified manager during the hours of \_\_\_\_\_ days a week. In addition, the Operator will employ \_\_\_\_\_ full-time working supervisors during each shift, \_\_\_\_\_ a day, and \_\_\_\_\_ days a week or a representative of the Operator at times other than those specified here. If the above supervisors, will visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Officer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator shall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator's manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator will pay all employees not less frequently than once every two weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.

l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation

n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the Contract

## 20. PAYMENT TO THE GOVERNMENT.

a. Payment of \$\_\_\_\_\_ to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.

b. All payments will be mailed to the Chief, Accounting Division,

located at \_\_\_\_\_.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

## 21. EQUIPMENT.

a. Equipment to be provided by the Government. The Government will provide and the Operator may cause the equipment listed herein. The Government will also:

(1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and

(2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less than 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep fat fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free from grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

c. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs or replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

d. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

e. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

## 22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

## 23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

## 24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending

3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

25. ACCOUNTING DATA. The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.

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## **Section 2 : Responsibilities**

**Old Content: Procurement Guidance:**

*T3.10.4 Quality Assurance*

*Quality Assurance*

### **Section 2 : Responsibilities**

a. *Product or Service Team.* The product or service team should coordinate with the Acquisition Quality Assurance Division and should include quality assurance provisions in procurement planning documents, screening information requests (SIR), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement requests necessary to meet the quality assurance objectives set forth above. The product or service team should ensure that appropriate criteria are developed for evaluating the quality assurance plans included in prospective contractors' proposals.

b. *Office of Acquisition Policy and Contracting.* The Office of Acquisition Policy and Contracting (AJA-4) formulates and implements agency policy, standards, and procedures for the quality assurance programs involved in NAS acquisitions for systems, equipment, material, and services. In addition, AJA-4 provides guidance, oversight, and support to regions, service centers, and centers for implementing quality assurance programs to ensure compliance with the quality assurance policy.

c. *Quality Reliability Officer (QRO).* The QRO has the responsibility to provide on-site support at the contractor's facility under the authority delegated by the Contractin Officer. The QRO ensures that the contractor's quality system satisfies the contract quality assurance requirements, and is authorized to accept or reject systems, equipment, and material in accordance with the contract requirements.

d. *Contracting Officer (CO).* Before issuing the SIR, the CO ensures appropriate QA provisions are included in the documentation. The CO coordinates with the Acquisition Quality Assurance

Division regarding appropriate QA provisions. After contract award, the CO forwards copies of the contract to the Acquisition Quality Assurance Division. The draft letter of QRO designation to the contractor is forwarded by the Quality Assurance Division to the CO for signature. A sample letter is in Appendix 1.

(1) The CO should coordinate with the Acquisition Quality Assurance Division before issuing new SIRs or other draft SIRs outside of the FAA to ensure that contracts contain appropriate quality assurance provisions.

(2) Once the contract is executed, the CO ensures the contractor delivers the systems, equipment, material, and services in accordance with all quality provisions of the contract.

e. *Regions, Service Areas, and Centers.* The regions, service areas, and centers should include appropriate requirements for quality assurance programs in their NAS acquisitions for systems, equipment, material, and services

**New Content: Procurement Guidance:**

*T3.10.4 Quality Assurance*

*Quality Assurance*

**Section 2 : Responsibilities**

a. *Product or Service Team.* The product or service team should coordinate with the Acquisition Quality Assurance Group (AJA-44) and should include quality assurance provisions in procurement planning documents, screening information requests (SIR), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement requests necessary to meet the quality assurance objectives set forth above. The product or service team should ensure that appropriate criteria are developed for evaluating the quality assurance plans included in prospective contractors' proposals.

b. *Office of Acquisition and Contracting.* The Office of Acquisition and Contracting implements agency policy, standards, and procedures for the quality assurance programs involved in NAS acquisitions for systems, equipment, material, and services. In addition, the Office provide guidance, oversight, and support to regions, service centers, and centers for implementing quality assurance programs to ensure compliance with the quality assurance policy.

c. *Quality Reliability Officer (QRO).* The QRO has the responsibility to provide on-site support at the contractor's facility under the authority delegated by the Contracting Officer. The QRO ensures that the contractor's quality system satisfies the contract quality assurance requirements, and is authorized to accept or reject systems, equipment, and material in accordance with the contract requirements.

d. *Contracting Officer (CO).* Before issuing the SIR, the CO ensures appropriate QA provisions are included in the documentation. The CO coordinates with the Acquisition Quality Assurance Group regarding appropriate QA provisions. After contract award, the CO forwards copies of the contract to the Acquisition Quality Assurance Group. The draft letter of QRO designation to the

contractor is forwarded by the Quality Assurance Group to the CO for signature. A sample letter is in Appendix 1.

(1) The CO should coordinate with the Acquisition Quality Assurance Group before issuing new SIRs or other draft SIRs outside of the FAA to ensure that contracts contain appropriate quality assurance provisions.

(2) Once the contract is executed, the CO ensures the contractor delivers the systems, equipment, material, and services in accordance with all quality provisions of the contract.

e. *Regions, Service Areas, and Centers.* The regions, service areas, and centers should include appropriate requirements for quality assurance programs in their NAS acquisitions for systems, equipment, material, and services

**Red Line Content: Procurement Guidance:**

*T3.10.4 Quality Assurance*

*Quality Assurance*

**Section 2 : Responsibilities**

a. *Product or Service Team.* The product or service team should coordinate with the Acquisition Quality Assurance ~~Group~~ ~~Division~~ ~~(AJA-44)~~ and should include quality assurance provisions in procurement planning documents, screening information requests (SIR), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement requests necessary to meet the quality assurance objectives set forth above. The product or service team should ensure that appropriate criteria are developed for evaluating the quality assurance plans included in prospective contractors' proposals.

b. *Office of Acquisition ~~Policy~~ and Contracting.* The Office of Acquisition ~~Policy~~ and Contracting ~~(AJA-4)~~ ~~formulates and~~ implements agency policy, standards, and procedures for the quality assurance programs involved in NAS acquisitions for systems, equipment, material, and services. In addition, ~~AJA-4~~ ~~the provides~~ ~~Office provide~~ guidance, oversight, and support to regions, service centers, and centers for implementing quality assurance programs to ensure compliance with the quality assurance policy.

c. *Quality Reliability Officer (QRO).* The QRO has the responsibility to provide on-site support at the contractor's facility under the authority delegated by the ~~Contractin~~ ~~Contracting~~ Officer. The QRO ensures that the contractor's quality system satisfies the contract quality assurance requirements, and is authorized to accept or reject systems, equipment, and material in accordance with the contract requirements.

d. *Contracting Officer (CO).* Before issuing the SIR, the CO ensures appropriate QA provisions are included in the documentation. The CO coordinates with the Acquisition Quality Assurance ~~Division~~ ~~Group~~ regarding appropriate QA provisions. After contract award, the CO forwards copies of the contract to the Acquisition Quality Assurance ~~Division~~ ~~Group~~. The draft letter of

QRO designation to the contractor is forwarded by the Quality Assurance ~~Division~~ Group to the CO for signature. A sample letter is in Appendix 1.

(1) The CO should coordinate with the Acquisition Quality Assurance ~~Division~~ Group before issuing new SIRs or other draft SIRs outside of the FAA to ensure that contracts contain appropriate quality assurance provisions.

(2) Once the contract is executed, the CO ensures the contractor delivers the systems, equipment, material, and services in accordance with all quality provisions of the contract.

e. *Regions, Service Areas, and Centers.* The regions, service areas, and centers should include appropriate requirements for quality assurance programs in their NAS acquisitions for systems, equipment, material, and services

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## **Section 12 : Approval of Multiple-Award Procurement Programs**

**Old Content:** Procurement Guidance:

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

### **Section 12 : Approval of Multiple-Award Procurement Programs**

a. FAA's multiple-award procurement programs expedite contracting processes for recurring needs by establishing more than one competitively awarded task/delivery order contract or agreement, or qualified vendors list, in broad categories of work, such as information technology or engineering services. As FAA organizations identify specific needs, they place orders against an individual contract or agreement or qualified vendors list using procedures established under the particular multiple-award program.

b. Before any FAA organization establishes a new multiple-award procurement program, it must document the program's benefit, administrative cost, span of use, ordering procedures, and internal oversight mechanisms. Written approval, based on potential size, complexity, and scope of aggregate needs, is also required before an FAA organization may begin any activity to establish a multiple award procurement program, as follows:

(1) Joint Resources Council (JRC) approves any multiple award procurement program that is part of the procurement strategy for an investment program subject to JRC approval. The justification for the procurement program is described in the Exhibit 300 Attachment 3, Integrated Strategy and Planning, and is approved by the JRC at the final investment decision.

(2) FAA Acquisition Executive (FAE) approves any multiple award procurement program, any qualified vendors list, or any blanket purchase agreement intended to satisfy needs across one or more ATO service organization, ATO service area, non-ATO line of business, or staff office.

(3) Chief of the Contracting Office approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy needs of one directorate (or equivalent organizational level) within an ATO service organization, ATO service area, non-ATO line of business, or staff office.

c. The FAA organization establishing the multiple award procurement program must send a copy of the approved justification to the Director of Acquisition Policy and Contracting (AJA-4) at Headquarters.

**New Content:** Procurement Guidance:

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

**Section 12 : Approval of Multiple-Award Procurement Programs**

a. The FAA's multiple-award procurement programs expedite contracting processes for recurring needs by establishing more than one competitively awarded task/delivery order contract or agreement, or qualified vendors list, in broad categories of work, such as information technology or engineering services. As FAA organizations identify specific needs, they place orders against an individual contract, agreement, or qualified vendors list using procedures established under the particular multiple-award program.

b. Before any FAA organization establishes a new multiple-award procurement program, it must document the program's benefit, administrative cost, span of use, ordering procedures, and internal oversight mechanisms. Written approval, based on potential size, complexity, and scope of aggregate needs, is also required before an FAA organization may begin any activity to establish a multiple award procurement program, as follows:

(1) Joint Resources Council (JRC) approves any multiple award procurement program that is part of the procurement strategy for an investment program subject to JRC approval. The justification for the procurement program is described in the Integrated Strategy and Planning Document, and is approved by the JRC at the final investment decision.

(2) FAA Acquisition Executive approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy recurring needs across more than one ATO service organization, ATO service area, or non-ATO line of business or staff office.

(3) Chief of the Contracting Office approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy recurring needs of one ATO service organization, ATO service area, or non-ATO line of business or staff office.

c. The FAA organization establishing the multiple award procurement program must send a copy of the approved justification to the Director of Acquisition and Contracting at Headquarters.

**Red Line Content: Procurement Guidance:**

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

**Section 12 : Approval of Multiple-Award Procurement Programs**

- a. **The** FAA's multiple-award procurement programs expedite contracting processes for recurring needs by establishing more than one competitively awarded task/delivery order contract or agreement, or qualified vendors list, in broad categories of work, such as information technology or engineering services. As FAA organizations identify specific needs, they place orders against an individual contract ~~or~~ agreement, or qualified vendors list using procedures established under the particular multiple-award program.
- b. Before any FAA organization establishes a new multiple-award procurement program, it must document the program's benefit, administrative cost, span of use, ordering procedures, and internal oversight mechanisms. Written approval, based on potential size, complexity, and scope of aggregate needs, is also required before an FAA organization may begin any activity to establish a multiple award procurement program, as follows:
- (1) Joint Resources Council (JRC) approves any multiple award procurement program that is part of the procurement strategy for an investment program subject to JRC approval. The justification for the procurement program is described in the ~~Exhibit 300 Attachment 3,~~ Integrated Strategy and Planning **Document**, and is approved by the JRC at the final investment decision.
  - (2) FAA Acquisition Executive ~~(FAE)~~ approves any multiple award procurement program, ~~any~~ qualified vendors list, or ~~any~~ blanket purchase agreement intended to satisfy **recurring** needs across ~~one or more~~ **more than one** ATO service organization, ~~ATO service area,~~ **or** non-ATO line of business, or staff office.
  - (3) Chief of the Contracting Office approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy **recurring** needs of one ~~directorate (or equivalent organizational level) within an~~ ATO service organization, ATO service area, **or** non-ATO line of business, or staff office.
- c. The FAA organization establishing the multiple award procurement program must send a copy of the approved justification to the Director of Acquisition **Policy** and Contracting ~~(AJA-4)~~ at Headquarters.

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**Section 9 : Reports**

**Old Content: Procurement Guidance:**

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

**Section 9 : Reports**

a. *Requirements.* The FAA remains subject to certain statutory, regulatory, and policy requirements and must continue to report the following:

(1) *Report of Proposed Federal Construction.* Construction programs estimated to exceed \$500,000 are subject to Davis-Bacon Act regulations at 29 CFR 1.4. This CFR section requires the FAA to furnish the Department of Labor a general outline of its proposed construction programs for the upcoming fiscal year. The report must identify the estimated number of projects that will require wage determinations, the anticipated types of construction, and the locations of construction. Due Annually; March 20 (see Procurement Toolbox, Procurement Form Template #90).

(2) *Randolph-Sheppard Vending Facilities Report.* Randolph-Sheppard Act regulations at 34 CFR 395.38 require that each Federal property managing agency file an annual report with the Department of Education. This report will reflect the number of applications received for establishing vending facilities, vending machine income collected and disbursed to the State licensing agency in each state, and the amount retained. Due Annually; January 6 (see Procurement Toolbox, Procurement Form Template # 91).

(3) *Resource Conservation and Recovery Act Report (RCRA) and Executive Order (EO) 12873 Annual Report.* Section 6002 of RCRA requires Office of the Federal Procurement Policy (OFPP) to report to Congress on the actions taken by agencies to implement this statute. EO 12873 reinforces affirmative procurement, waste minimization, and recycling efforts and requires Federal agencies to report on their efforts to the Office of the Federal Environmental Executive (OFEE). To simplify the reporting process and reduce the reporting burden placed on agencies, the OFPP and the OFEE have merged the reporting requirements of section 6002 of RCRA, and EO 12873 into a single annual report. The report is divided into the Agency Summary Report and the Supply Center Summary Report. The report covers commercial purchases of items contained in the Comprehensive Procurement Guidelines, as well as affirmative procurement, waste minimization and recycling efforts. Due Annually; February 26 (see Procurement Toolbox, Procurement Form Template #92).

(4) *Semiannual Labor Compliance Report.* Davis-Bacon Act regulations at 29 CFR 5.7 require data on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The report will identify enforcement actions taken by the contracting offices. Due Semi-Annually; October 20 & April 20 (see Procurement Toolbox, Procurement Form Template #93).

(5) *Lobbying Disclosure Report.* Public Law 101-121 requires contractors to disclose any lobbying activities. The Lobbying Disclosure Act of 1995 eliminated the requirement to forward a copy of each disclosure form, SF LLL to Congress semiannually. Therefore, this report is no longer required. The original SF LLL should continue to be retained in the contract file.

(6) *Major Procurement Program Goals (MPPG)*. Pursuant to Executive Order 12928 of 9/16/94, the FAA Administrator will report to the Administrator of the Small Business Administration through the Secretary of the Department of Transportation on the extent of achievements against the MPPG established. Three reports that include the number and dollar obligation of all procurements for each MPPG, excluding interagency agreements, are required by the Small Business Development Staff (AJA-8).

b. *Responsibilities.*

(1) The Chief of the Contracting Office (COCO) in Headquarters, service areas, and centers must collect, compile and submit for their respective organizations the reports outlined below. Reports must be received by Procurement Information and Services Branch (AJA-43), or other designated recipient, prior to the stated due dates. The COCO must also provide negative responses when there is no data to report for a particular report during the reporting period.

(2) The Procurement Information and Services Branch (AJA-43) will consolidate the reports that are required to be submitted to AJA-43 into a single agency-wide report for submission to the various requesters prior to their prescribed due dates. All other reports will be submitted by the service areas, Centers, and Headquarters, directly to the requester.

c. Specifics about each report are as follows:

<u>Title of Report</u>	<u>Format</u>	<u>Reporting Period</u>	<u>Due Date to AJA-43</u>
Report of Proposed Federal Construction	FAA Form 4474-5	Annually; prospective activity for the next fiscal year.	March 20
Randolph Sheppard Vending Facilities Report	Interagency Form 1270-ED-AN	Annually; for the prior calendar year.	January 6
Resource Conservation and Recovery Act Report	OFPP and OFEE prescribed format. Negative responses required.	Annually; for the prior calendar year.	February 26
Semiannual Labor Compliance Report	No prescribed format; an original and one copy is required.	Semi-annually; for the prior 6 month period.	October 20; April 20
Lobbying	No longer	Not applicable.	Not applicable.

Disclosure Report	required.		
Major Procurement Program Goals (Projection)	Format prescribed by AJA-8; Report directly to AJA-8 by Memorandum from the ATO Vice Presidents, FAA Associate and Assistant Administrators, Regional Administrators and Center Directors.  (See Appendix 2)	Annual, prior to October 1 of each fiscal year. (See AMS Section 3.6.1.3)	N/A
Pre-AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition Policy and Contracting, Regional Administrators and Center Directors.  (See Appendix 3)	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A
Post AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition Policy and Contracting, Regional Administrators and Center	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A

	Directors.  (See Appendix 4)		
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**New Content: Procurement Guidance:**

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

**Section 9 : Reports**

a. *Requirements.* The FAA remains subject to certain statutory, regulatory, and policy requirements and must continue to report the following:

(1) *Report of Proposed Federal Construction.* Construction programs estimated to exceed \$500,000 are subject to Davis-Bacon Act regulations at 29 CFR 1.4. This CFR section requires the FAA to furnish the Department of Labor a general outline of its proposed construction programs for the upcoming fiscal year. The report must identify the estimated number of projects that will require wage determinations, the anticipated types of construction, and the locations of construction. Due Annually; March 20 (see Procurement Toolbox, Procurement Form Template #90).

(2) *Randolph-Sheppard Vending Facilities Report.* Randolph-Sheppard Act regulations at 34 CFR 395.38 require that each Federal property managing agency file an annual report with the Department of Education. This report will reflect the number of applications received for establishing vending facilities, vending machine income collected and disbursed to the State licensing agency in each state, and the amount retained. Due Annually; January 6 (see Procurement Toolbox, Procurement Form Template # 91).

(3) *Resource Conservation and Recovery Act Report (RCRA) and Executive Order (EO) 12873 Annual Report.* Section 6002 of RCRA requires Office of the Federal Procurement Policy (OFPP) to report to Congress on the actions taken by agencies to implement this statute. EO 12873 reinforces affirmative procurement, waste minimization, and recycling efforts and requires Federal agencies to report on their efforts to the Office of the Federal Environmental Executive (OFEE). To simplify the reporting process and reduce the reporting burden placed on agencies, the OFPP and the OFEE have merged the reporting requirements of section 6002 of RCRA, and EO 12873 into a single annual report. The report is divided into the Agency Summary Report and the Supply Center Summary Report. The report covers commercial purchases of items contained in the Comprehensive Procurement Guidelines, as well as affirmative procurement, waste minimization and recycling efforts. Due Annually; February 26 (see Procurement Toolbox, Procurement Form Template #92).

(4) *Semiannual Labor Compliance Report*. Davis-Bacon Act regulations at 29 CFR 5.7 require data on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The report will identify enforcement actions taken by the contracting offices. Due Semi-Annually; October 20 & April 20 (see Procurement Toolbox, Procurement Form Template #93).

(5) *Lobbying Disclosure Report*. Public Law 101-121 requires contractors to disclose any lobbying activities. The Lobbying Disclosure Act of 1995 eliminated the requirement to forward a copy of each disclosure form, SF LLL to Congress semiannually. Therefore, this report is no longer required. The original SF LLL should continue to be retained in the contract file.

(6) *Major Procurement Program Goals (MPPG)*. Pursuant to Executive Order 12928 of 9/16/94, the FAA Administrator will report to the Administrator of the Small Business Administration through the Secretary of the Department of Transportation on the extent of achievements against the MPPG established. Three reports that include the number and dollar obligation of all procurements for each MPPG, excluding interagency agreements, are required by the Small Business Development Staff (AJA-8).

b. *Responsibilities.*

(1) The Chief of the Contracting Office (COCO) in Headquarters, Logistics Service Areas, and Aeronautical Center must collect, compile and submit for their respective organizations the reports outlined below. Reports must be received by Procurement Information and Services Branch (AJA-A12), or other designated recipient, prior to the stated due dates. The COCO must also provide negative responses when there is no data to report for a particular report during the reporting period.

(2) The Procurement Information and Services Branch (AJA-A12) will consolidate the reports that are required to be submitted to AJA-A12 into a single agency-wide report for submission to the various requesters prior to their prescribed due dates. All other reports will be submitted by the Logistics Service Areas, Centers, and Headquarters, directly to the requester.

c. Specifics about each report are as follows:

<u>Title of Report</u>	<u>Format</u>	<u>Reporting Period</u>	<u>Due Date to AJA-A12</u>
Report of Proposed Federal Construction	FAA Form 4474-5	Annually; prospective activity for the next fiscal year.	March 20

Randolph Sheppard Vending Facilities Report	Interagency Form 1270-ED-AN	Annually; for the prior calendar year.	January 6
Resource Conservation and Recovery Act Report	OFPP and OFEE prescribed format. Negative responses required.	Annually; for the prior calendar year.	February 26
Semiannual Labor Compliance Report	No prescribed format; an original and one copy is required.	Semi-annually; for the prior 6 month period.	October 20; April 20
Lobbying Disclosure Report	No longer required.	Not applicable.	Not applicable.
Major Procurement Program Goals (Projection)	Format prescribed by AJA-8; Report directly to AJA-8 by Memorandum from the ATO Vice Presidents, FAA Associate and Assistant Administrators, Regional Administrators and Center Directors.  (See Appendix 2)	Annual, prior to October 1 of each fiscal year. (See AMS Section 3.6.1.3)	N/A
Pre-AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional Administrators and Center Directors.  (See Appendix 3)	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A
Post AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional Administrators and Center Directors.  (See Appendix 4)	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A

**Red Line Content: Procurement Guidance:**

*T3.13.1 Other Administrative Procedures*

*Administrative Matters*

**Section 9 : Reports**

a. *Requirements.* The FAA remains subject to certain statutory, regulatory, and policy requirements and must continue to report the following:

(1) *Report of Proposed Federal Construction.* Construction programs estimated to exceed \$500,000 are subject to Davis-Bacon Act regulations at 29 CFR 1.4. This CFR section requires the FAA to furnish the Department of Labor a general outline of its proposed construction programs for the upcoming fiscal year. The report must identify the estimated number of projects that will require wage determinations, the anticipated types of construction, and the locations of construction. Due Annually; March 20 (see Procurement Toolbox, Procurement Form Template #90).

(2) *Randolph-Sheppard Vending Facilities Report.* Randolph-Sheppard Act regulations at 34 CFR 395.38 require that each Federal property managing agency file an annual report with the Department of Education. This report will reflect the number of applications received for establishing vending facilities, vending machine income collected and disbursed to the State licensing agency in each state, and the amount retained. Due Annually; January 6 (see Procurement Toolbox, Procurement Form Template # 91).

(3) *Resource Conservation and Recovery Act Report (RCRA) and Executive Order (EO) 12873 Annual Report.* Section 6002 of RCRA requires Office of the Federal Procurement Policy (OFPP) to report to Congress on the actions taken by agencies to implement this statute. EO 12873 reinforces affirmative procurement, waste minimization, and recycling efforts and requires Federal agencies to report on their efforts to the Office of the Federal Environmental Executive (OFEE). To simplify the reporting process and reduce the reporting burden placed on agencies, the OFPP and the OFEE have merged the reporting requirements of section 6002 of RCRA, and EO 12873 into a single annual report. The report is divided into the Agency Summary Report and the Supply Center Summary Report. The report covers commercial purchases of items contained in the Comprehensive Procurement Guidelines, as well as affirmative procurement, waste minimization and recycling efforts. Due Annually; February 26 (see Procurement Toolbox, Procurement Form Template #92).

(4) *Semiannual Labor Compliance Report.* Davis-Bacon Act regulations at 29 CFR 5.7 require data on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The report will identify enforcement actions taken by the contracting offices. Due Semi-Annually; October 20 & April 20 (see Procurement Toolbox, Procurement Form Template #93).

(5) *Lobbying Disclosure Report.* Public Law 101-121 requires contractors to disclose any lobbying activities. The Lobbying Disclosure Act of 1995 eliminated the requirement to forward a copy of each disclosure form, SF LLL to Congress semiannually. Therefore,

this report is no longer required. The original SF LLL should continue to be retained in the contract file.

(6) *Major Procurement Program Goals (MPPG)*. Pursuant to Executive Order 12928 of 9/16/94, the FAA Administrator will report to the Administrator of the Small Business Administration through the Secretary of the Department of Transportation on the extent of achievements against the MPPG established. Three reports that include the number and dollar obligation of all procurements for each MPPG, excluding interagency agreements, are required by the Small Business Development Staff (AJA-8).

b. *Responsibilities.*

(1) The Chief of the Contracting Office (COCO) in Headquarters, serviceLogistics areasService Areas, and centersAeronautical Center must collect, compile and submit for their respective organizations the reports outlined below. Reports must be received by Procurement Information and Services Branch (AJA-43A12), or other designated recipient, prior to the stated due dates. The COCO must also provide negative responses when there is no data to report for a particular report during the reporting period.

(2) The Procurement Information and Services Branch (AJA-43A12) will consolidate the reports that are required to be submitted to AJA-43A12 into a single agency-wide report for submission to the various requesters prior to their prescribed due dates. All other reports will be submitted by the serviceLogistics areasService Areas, Centers, and Headquarters, directly to the requester.

c. Specifics about each report are as follows:

<u>Title of Report</u>	<u>Format</u>	<u>Reporting Period</u>	<u>Due Date to AJA-43A12</u>
Report of Proposed Federal Construction	FAA Form 4474-5	Annually; prospective activity for the next fiscal year.	March 20
Randolph Sheppard Vending Facilities Report	Interagency Form 1270-ED-AN	Annually; for the prior calendar year.	January 6
Resource Conservation and Recovery Act Report	OFPP and OFEE prescribed format. Negative responses required.	Annually; for the prior calendar year.	February 26
Semiannual Labor Compliance	No prescribed format; an	Semi-annually; for the prior 6	October 20; April 20

Report	original and one copy is required.	month period.	
Lobbying Disclosure Report	No longer required.	Not applicable.	Not applicable.
Major Procurement Program Goals (Projection)	Format prescribed by AJA-8; Report directly to AJA-8 by Memorandum from the ATO Vice Presidents, FAA Associate and Assistant Administrators, Regional Administrators and Center Directors.  (See Appendix 2)	Annual, prior to October 1 of each fiscal year. (See AMS Section 3.6.1.3)	N/A
Pre-AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition <a href="#">Policy</a> and Contracting, Regional Administrators and Center Directors.  (See Appendix 3)	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A
Post AMS Major Procurement Program Goals (Actuals)	Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition <a href="#">Policy</a> and Contracting,	Quarterly, by the 15 <sup>th</sup> of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A

	Regional Administrators and Center Directors.  (See Appendix 4)		
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